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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 LES COHEN,
16 Plaintiff,

17 v.
18

19 GLYNIS TURRENTINE; and SUNTRUST
20 MORTGAGE, INC.; and U.S. BANK
21 NATIONAL ASSOCIATION AS
22 TRUSTEE FOR JP ALT 2006-A2; and
23 MONTEREY AT THE LAS VEGAS
24 COUNTRY CLUB; and LAS VEGAS
25 INTERNATIONAL COUNTRY CLUB
26 ESTATES; DOES 1 through 10, inclusive
27 ROE CORPORATION, 1 through 10,
28 inclusive,

Defendants.

CASE NO. 2:15-CV-00412-GMN-GWF

**DEFENDANT SUNTRUST
MORTGAGE'S RESPONSE TO ORDER
TO SHOW CAUSE AS TO WHY THE
COURT SHOULD NOT REMAND THIS
ACTION TO CLARK COUNTY
DISTRICT COURT FOR FAILURE TO
SATISFY THE DIVERSITY
JURISDICTION REQUIREMENTS SET
FORTH IN 28 U.S.C. §1332**

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Defendant SunTrust Mortgage, Inc. ("SunTrust"), by and through its counsel of record, the law firm of Snell & Wilmer L.L.P., hereby respond to the Court's Order to show cause as to why the Court should not remand this action to Clark County District Court for failure to satisfy the diversity jurisdiction requirements set forth in 28 U.S.C. § 1332. This Response is based on the Memorandum of Points and Authorities herein, all papers on file with this Court, any

1 documents incorporated by reference or attached to the pleadings, and any oral argument that this
 2 Court may entertain. SunTrust hereby incorporates herein its Request for Judicial Notice and
 3 attached documents, filed concurrently herewith.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 There is complete diversity between the parties because none of the properly joined
 7 Defendants are citizens of Nevada. Co-defendants, Glynis Turrentine (“Turrentine”), Monterey
 8 at the Las Vegas Country Club and Las Vegas International Country Club Estates (Monterey at
 9 the Las Vegas Country Club and Las Vegas International Country Club Estates are collectively
 10 referred to as the “HOA Defendants”) are Nevada citizens, but fraudulently joined. The language
 11 in the Complaint, in addition to the recorded documents, establishes that Turrentine and the HOA
 12 Defendants are not asserting an adverse interest in the Property. Moreover, the Complaint fails to
 13 state a cause of action against Turrentine or the HOA Defendants. Plaintiff fraudulently joined
 14 Turrentine and the HOA Defendants solely for the purposes of defeating diversity jurisdiction,
 15 and thus their citizenship should be disregarded for purposes of determining diversity.

16 **II. FACTUAL SUMMARY**

17 On or about November 11, 2005, Glynis Turrentine (“Turrentine”) purchased the real
 18 property at issue here, identified as 746 Oakmont Ave. #707, Las Vegas, Nevada 89109 (the
 19 “Property”). (Property generally described at Compl. ¶ 1; Grant, Bargain and Sale Deed attached
 20 to RJD as Exhibit 1.)¹ Turrentine obtained a loan from SunTrust Mortgage, Inc. (“SunTrust”) in
 21 the amount of \$185,600.00 to do so. (First Deed of Trust attached to RJD as Exhibit 2.) The
 22 Deed of Trust was recorded on November 18, 2005. (Deed of Trust attached to RJD as Exhibit 2.)
 23 Also, on November 11, 2005, Turrentine obtained a second loan from SunTrust in the amount of
 24 \$46,400.00, which was secured by a Second Deed of Trust, recorded on November 18, 2005.
 25 (Second Deed of Trust attached to RJD as Exhibit 3.) On July 19, 2011, beneficial interest in the

26 ¹ The Court may take into account evidence beyond the pleadings in determining whether
 27 fraudulent joinder exists. See *Knutson v. Allis-Chalmers Corp.*, 358 F. Supp. 2d 983, 989 (D.
 Nev. 2005); *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1068 (9th Cir. 2001) (citing
Cavallini v. State Farm Mut. Auto. Ins. Co., 44 F.3d 256, 263 (5th Cir. 1995).

1 First Deed of Trust was transferred to U.S. Bank National Association as Trustee for JP ALT
 2 2006-A2 (“U.S. Bank”). (Assignment of Deed of Trust attached to RJN as Exhibit 4.)
 3 Additionally, on January 12, 2012, MERS, as nominee for SunTrust, recorded a Corporate
 4 Assignment of Deed of Trust, assigning the First Deed of Trustto U.S. Bank. (Corporate
 5 Assignment of Deed of Trust attached to RJN as Exhibit 5.)

6 Turrentine stopped making payments due under both Deeds of Trust, and allegedly
 7 stopped paying homeowners association dues to the Monterey at the Las Vegas Country Club and
 8 Las Vegas International Country Club Estates (the “HOA Defendants”). (Compl. ¶ 12; Notice of
 9 Delinquent Assessment Lien, recorded on November 24, 2008, attached to RJN as Exhibit 6 and
 10 Notice of Delinquent Assessment Lien, recorded on May 14, 2010, attached to RJN as Exhibit 7.)
 11 The HOA Defendants then recorded a Notice of Default and Election To Sell Under Homeowners
 12 Association Lien on about March 23, 2011. (HOA Notice of Default attached to RJN as Exhibit
 13 8.) On March 27, 2014, the HOA recorded a Notice of Foreclosure Sale. (HOA Notice of
 14 Foreclosure Sale attached to RJN as Exhibit 9.)

15 The HOA Defendants held a foreclosure sale on May 23, 2014 pursuant to NRS 116.3116
 16 *et seq.* (Foreclosure Deed attached to RJN as Exhibit 10.) At that sale, the Property was
 17 purportedly sold to DML Investment Group, LLC for the total amount of \$7,400.00 with a
 18 foreclosure deed being recorded shortly thereafter on May 27, 2014. (Compl. ¶ 10-11; see Ex 10.)
 19 On June 13, 2014, Plaintiff purported purchased the Property from DML Investment Group, LLC.
 20 (Grant, Bargain, and Sale Deed attached to RJN as Exhibit 11.) On June 17, 2014, the HOA
 21 defendants recorded two Releases and Satisfaction of Assessment Liens against the Property.
 22 (Releases and Satisfaction of Assessment Liens attached to RJN as Exhibit 12 & 13.)

23 On January 29, 2015, Plaintiff, Les Cohen (“Cohen”) filed the Complaint, initiating the
 24 Action. Plaintiff served the Summons and Complaint to SunTrust on February 6, 2015. A copy
 25 of all process, pleadings, briefings, and orders served upon SunTrust are attached pursuant to 28
 26 U.S.C. § 1446. *See* Summons and Complaint, affidavits of service on SunTrust, Monterey at the
 27 Las Vegas Country Club, U.S. Bank National Association, and affidavit of due diligence on U.S.
 28 Bank National Association. Plaintiff’s Complaint requests quiet title, and injunctive and

1 declaratory relief. Plaintiff claims that Defendants should have no right, title, interest or claim in
 2 the property located at 746 Oakmont Ave. #707, Las Vegas, NV 89109. Plaintiff also alleges
 3 slander to title. *See* Complaint. At this juncture, SunTrust is the only Defendant who has
 4 responded to the Complaint.

5 II. LEGAL STANDARD

6 Under 28 U.S.C. § 1441, Congress has granted defendants the statutory right to remove a
 7 case from state court to a United States District Court where that case could have originally been
 8 filed in federal court. This grant is authorized by Article III, Section 2 of the United States
 9 Constitution, which extends judicial power of the federal courts to controversies “between
 10 citizens of different states.” 28 U.S.C. § 1332. This Court has original jurisdiction of the Action
 11 under 28 U.S.C. § 1332, as complete diversity exists between the Plaintiff and the Defendants.
 12 As such, a Defendant may remove the Action to the District Court of the United States for the
 13 district embracing the Court where the Action is pending. *See* 28 U.S.C. § 1441.

14 1. Legal standard to disregard citizenship for purposes of diversity.

15 A fraudulently joined defendant will not defeat removal on diversity grounds. *Silon v.*
American Home Assurance Company, 2009 WL 1090700, * 4 (D. Nev. 2009) (citing *Ritchey v.*
Upjohn Drug Co., 139 F. 3d 1313, 1318 (9th Cir. 1998) (“fraudulently joined defendants will not
 16 defeat removal on diversity grounds.”) “[A] defendant must have the opportunity to show that
 17 the individuals joined in the action cannot be liable on any theory.” *Ritchey*, 139 F. 3d at 1318.
 18 In determining fraudulent joinder, “the Court may ‘pierce the pleadings’ and consider ‘summary
 19 judgment-type evidence such as affidavits and deposition testimony.’” *Morris v. Princess*
Cruises, Inc., 236 F.3d 1061, 1068 (9th Cir. 2001) (citing *Cavallini v. State Farm Mut. Auto. Ins.*
Co., 44 F.3d 256, 263 (5th Cir. 1995).) “If the plaintiff fails to state a cause of action against a
 20 resident defendant, and the failure is obvious according to the settled rules of the state, the joinder
 21 of the resident defendant is fraudulent.” *McCabe v. General Foods Corp.*, 811 F. 2d 1336, 1339
 22 (9th Cir. 1987.)

23 “Claims for fraudulent joinder are reviewed on a standard similar to or more lenient than
 24 the standard for motions to dismiss.” *Knutson v. Allis-Chalmers Corp.*, 358 F. Supp. 2d 983, 995

(D. Nev. 2005) (*citing Sessions v. Chrysler Corp.*, 517 F.2d 759, 761 (9th Cir.1975) (noting that to the extent appellant's case could withstand a motion to dismiss, the joinder of claims against Defendants was not fraudulent); *Bertrand v. Aventis Pasteur Labs., Inc.*, 226 F.Supp.2d 1206, 1213 (D.Ariz.2002) (noting that the standard for fraudulent joinders is more lenient than that employed in motion to dismiss inquiries). Here, Plaintiff is seeking to quiet title and enjoin U.S. Bank and SunTrust from foreclosing on the Property. As Turrentine and the HOA Defendants no longer have any interest in the Property and, more importantly, as they are not asserting an interest in the Property, there is no reason for them to respond to the Complaint or participate in this lawsuit. As established by Plaintiff's Affidavit of Due Diligence, Plaintiff cannot locate Turrentine, let alone establish that she is now claiming some sort of adverse claim on the Property. More importantly, Plaintiff served the HOA Defendants on February 5, 2015; however, they have not filed any response to the Complaint. Both the HOA Defendants and Turrentine's deadline to respond to the Complaint has long passed, yet Plaintiff has not filed a default against either. It is questionable that a Defendant allegedly asserting an adverse interest in the Property would fail to respond to a Complaint that would affect that very interest.

Both the law and facts of this case establish that joinder of Turrentine and the HOA Defendants was without reasonable basis and made in bad faith for fraudulent purpose of defeating removal. Other than the recorded interests of U.S. Bank and SunTrust, there are no other surviving competing interests upon the Property. As such, U.S. Bank and SunTrust are the only properly named Defendants.

1. The plain language of the Complaint establishes that Turrentine and the HOA were fraudulently joined.

The language of the Complaint clearly shows that Plaintiff is not asserting any viable claims against Turrentine or the HOA. This Court has recently addressed fraudulent joinder in the context of an identical HOA "super-priority" lien complaint, finding that the inclusion of a defendant in the same position as Turrentine (i.e., the original homeowner/borrower) constituted fraudulent joinder and therefore upheld removal and denied remand. *Weeping Hollow Ave. Trust v. Spencer*, 2:13-cv-544 JCM-VCF, 2013 WL 3270556, at *2-3 (D. Nev. June 26, 2013)

(unpublished.) In *Weeping Hollow*, the plaintiff filed a similar complaint for quiet title and declaratory relief alleging it owned certain real property free and clear pursuant to NRS 116.3116 *et seq.* after purchase of the property at an HOA foreclosure sale. *Weeping Hollow*, 2013 WL 3270556. The Court found that the plaintiff's complaint alleged that: (1) the foreclosure was lawful under NRS 116.3116 *et seq.* because the original homeowner/borrower failed to pay its HOA dues; (2) the foreclosure complied with all requirements of NRS 116.3116 *et seq.*, and (3) that the foreclosure was lawful and proper. *Id.* at *2-3. Based on these findings, the Court held that the plaintiff's foreclosure "pursuant to NRS 116 extinguished [the original homeowner/borrower's] rights or interest in the property" and thus the original homeowner/borrower "is a fraudulently joined defendant and is dismissed from the action. This court has original, diversity jurisdiction and denies the motion to remand." *Id.*

Likewise, in the Complaint at issue, Plaintiff alleged that: (1) "title stems from a foreclosure deed arising from a delinquency in assessments due from the *former* owner, Glynis Turrentine to the Monterey at the Las Vegas Country club pursuant to NRS Chapter 116"; and (2) "the interest of each of the defendants, if any, has been extinguished by reason of the foreclosure sale, which was properly conducted with adequate notice given to all persons and entities claiming a recorded interest in the subject property and resulting from a delinquency in assessments due from the former owner, to Monterey at the Las Vegas Country Club, pursuant to NRS Chapter 116 and *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014)." See Amended Complaint at ¶¶ 12 & 17, respectively. Additionally, there is absolutely no specific mention of Glynis Turrentine in the Complaint, apart from the statements regarding jurisdiction, let alone any viable causes of action pled against her.

It is also clear from a plain reading of the Complaint that Plaintiff is purely seeking to avoid the holders of the First and Second Deed of Trust (U.S. Bank and SunTrust) from foreclosing on the Property. The First Claim For Relief is seeking declaratory relief and quiet title finding that, "any attempt to transfer of title to the Property through a non-judicial foreclosure sale pursuant to either the First Deed of Trust or the Second Deed of Trust would be invalid." See Complaint ¶ 23. The Second Claim For Relief is only asserted against U.S. Bank

1 and SunTrust. Finally, the Third Claim for Relief for slander to title alleges that “defendants have
 2 made adverse claims that conflict with Plaintiff’s claim to title and constitute a cloud upon title.”
 3 See Complaint at ¶ 31. However, there is no evidence or even allegations that Turrentine or the
 4 HOA have made any adverse claims that conflict with Plaintiff’s claim to title. In fact, the
 5 evidence shows otherwise, as the HOA released both liens against the Property following the
 6 foreclosure sale. It is clear from the Complaint that Plaintiff is seeking to prevent the holders of
 7 the First and Second Deeds of Trust from asserting an interest in the Property or from foreclosing.
 8 However, in attempts to defeat complete diversity Plaintiff added the former owner and the HOA
 9 as parties.

10 2. *The claims asserted against Turrentine fail as a matter of law.*

11 “In Nevada, a complaint must set forth sufficient facts to establish all necessary elements
 12 of a claim for relief so that the adverse party has adequate notice of the nature of the claim and
 13 the relief sought.” *Chandler v. NDeX W., LLC*, 571 F. App’x 606, 608 (9th Cir. 2014) (*citing Hay*
 14 *v. Hay*, 100 Nev. 196, 678 P.2d 672, 674 (1984) (internal citations omitted)). In *Chandler*, the
 15 Ninth Circuit affirmed the district court’s decision that defendants were fraudulently joined
 16 because Plaintiff “failed to allege the necessary elements of any of the five state law causes of
 17 action against them.” *Id.* While Plaintiff has identified Turrentine as a party to this action,
 18 Plaintiff has not alleged any conduct by Turrentine in support of its claims for quiet title and
 19 declaratory relief.

20 Pursuant to Nevada Revised Statute (“NRS”) 40.010, a quiet title action “may be brought
 21 by any person *against another who claims an estate or interest in real property, adverse to the*
 22 *person bringing the action,* for the purpose of determining such adverse claim.” (emphasis
 23 added.) To succeed on its quiet title claim, Plaintiff must allege that Turrentine has asserted an
 24 adverse ownership interest in the Property. “A quiet title claim requires a plaintiff to allege that
 25 the defendant is unlawfully asserting an adverse claim to title to real property.” *Turbay v. Bank of*
 26 *Am., N.A.*, 2:12-CV-1367 JCM PAL, 2013 WL 1145212, at *4 (D. Nev. Mar. 18, 2013)
 27 (unpublished); *Kemberling v. Ocwen Loan Servicing, LLC*, 2:09-CV-00567-RCJ LRL, 2009 WL
 28 5039495, at *2 (D. Nev. Dec. 15, 2009) (unpublished). Plaintiff’s Complaint does not allege that

1 Turrentine has asserted any claim to the Property. To the contrary, Plaintiff's sole assertion is
 2 that Turrentine "was the owner(s) of the Property. . . .", conceding that Plaintiff is currently not
 3 asserting an interest in the Property.. (Compl. ¶ 2)(emphasis added.) Additionally, as explained
 4 above, Plaintiff makes no specific mention of Turrentine following the jurisdictional statements.

5 The former owner's interest in the property was entirely extinguished by the HOA
 6 foreclosure sale. It is undeniable that a borrower's property interest is extinguished by a
 7 foreclosure sale triggered by her own default. "[P]laintiff's title stems from a foreclosure deed
 8 arising from a delinquency in assessments due from the former owner, Glynis Turrentine to the
 9 Monterey at the Las Vegas Country Club."

10 Significantly, since the time of the HOA foreclosure sale Turrentine: 1) is not alleged to
 11 have asserted any ownership interest or claim of title in the Property; 2) presumably no longer
 12 resides in the Property; 3) has done nothing to indicate an intent to assert an ownership interest in
 13 the Property; and 4) has recorded no encumbrances against the Property. Turrentine's own
 14 conduct, or more properly, lack thereof, combined with Plaintiff's own allegations, establish that
 15 Turrentine is not a proper party to this action, and has been fraudulently joined solely in an
 16 attempt to prevent removal. *Weeping Hollow*, 2013 WL 3270556, at *2-3. As such, Plaintiff's
 17 claims against Turrentine fails as a matter of law because Turrentine cannot and has not asserted
 18 any interest in the Property, and the Plaintiff has not alleged any such interest. Thus, Turrentine
 19 should not be considered for purposes of diversity. *Id.*

20 3. *The claims asserted against the HOA Defendants fail as a matter of law.*

21 The Complaint alleges that the HOA Defendants "claim[] a lien upon the property for
 22 assessments in an amount of excess of that to which they may be entitled pursuant to NRS
 23 116.3116" (Compl. ¶ 15); however, the both of the HOA Defendants filed releases of their
 24 recorded liens after the foreclosure sale. See RJD Exhibits 12 & 13. The HOA Defendants
 25 directed the foreclosure sale, and after receipt of the proceeds therefrom, released their liens in
 26 full against the Property. These assessment liens were released in full well before the Complaint
 27 was filed. As such, there is no legal basis upon which the HOA could assert any adverse claim to
 28 the property in question.

As with Turrentine, since the time of the HOA foreclosure sale the HOA Defendants: 1) are not alleged to have asserted any ownership interest or claim of title in the Property; 2) have done nothing to indicate an intent to assert an ownership interest in the Property; and 3) have recorded no new encumbrances against the Property. The HOA Defendants' conduct combined with Plaintiff's allegations, establish that the HOA Defendants are not proper parties to this action, and have been fraudulently joined solely in an attempt to prevent removal. *Weeping Hollow*, 2013 WL 3270556, at *2-3. As such, Plaintiff's claims against the HOA Defendants fail as a matter of law because the HOA Defendants cannot and have not asserted any interest in the Property, and the Plaintiff has not alleged any such claim. Thus, the HOA Defendants should not be considered for purposes of diversity. *Id.*

B. The Amount in Controversy Requirement is Satisfied

The jurisdictional amount required for removal based on diversity is also met because Plaintiff's Complaint establishes that the amount in controversy exceeds the sum of \$75,000.00. 28 U.S.C. § 1332(a). "In a suit to quiet title, or to remove a cloud therefrom, it is not the value of the defendant's claim which is the amount in controversy, but it is the whole of the real estate to which the claim extends." *Allum v. Mortgage Elec. Registration Sys., Inc.*, 2:12-CV-00294-GMN, 2012 WL 4746927 (D. Nev. Oct. 3, 2012) (citing *Garfinkle v. Wells Fargo Bank*, 483 F.2d 1074, 1076 (9th Cir.1973) (treating entire value of real property as amount in controversy in action to enjoin foreclosure sale).)

Plaintiff seeks title to the property free of any obligations under the First and Second Deeds of Trust. Turrentine originally executed a promissory note secured by a deed of trust on the Property in the amount of \$185,600.00. *See* RJD Exhibit 2. Thereafter, Turrentine executed a secondary promissory note secured by a deed of trust on the Property in the amount of \$46,400.00. *See* RJD Exhibit 3. Accordingly, Plaintiff seeks to extinguish over \$230,000 in liens on the Property. Consequently, the Action satisfies the amount in controversy requirement under 28 U.S.C. § 1332.

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1 **III. TIMELINESS OF AND CONSENT TO REMOVAL**

2 A defendant must remove the case to federal court within 30 days of receipt of the
 3 complaint or “a copy of an amended pleading, motion, order or other paper from which it may
 4 first be ascertained that the case is one which is or has become removable.” *See* 28 U.S.C. §
 5 1446(b). The thirty-day period for removal does not begin to run until a party has received a copy
 6 of the complaint and been properly served. *Murphy Brothers, Inc. v. Michetti Pipe Stringing,*
 7 *Inc.*, 526 U.S. 344, 347-48 (1999). Upon information and belief, SunTrust was served on
 8 February 6, 2015. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b)(1) as the
 9 thirty days in which to remove does not expire until March 6, 2015.

10 As a general rule, removal requires the consent of all co-defendants. No other defendants
 11 have appeared at the time of this removal. As to the fraudulently joined Turrentine and HOA
 12 Defendants, “[i]n cases involving alleged improper or fraudulent joinder of parties, however,
 13 application of this requirement to improperly or fraudulently joined parties would be nonsensical,
 14 as removal in those cases is based on the contention that no other proper defendant exists.”
 15 *Jernigan v. Ashland Oil*, 989 F.2d 812, 815 (5th Cir. La. 1993); *see also Simpson v. Union Pac.*
 16 *R.R. Co.*, 282 F. Supp. 2d 1151, 1157 (N.D. Cal. 2003) (holding that “[f]raudulent joinder
 17 provides an exception to the unanimity requirement, in that the consent of a fraudulently joined
 18 defendant is not required to remove a case.”) As Turrentine and the HOA Defendants are
 19 fraudulently joined, are not proper parties, and have not made an appearance, their consent to
 20 removal is not required here.

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1 **IV. CONCLUSION**

2 Based on the foregoing, the pleadings, facts and relevant law establish that the citizenship
 3 of Turrentine and the HOA Defendants should be disregarded for determining whether complete
 4 diversity exists. As U.S. Bank and SunTrust are the only properly named Defendants, complete
 5 diversity exists and this matter should not be remanded back to Clark County District Court.
 6 Additionally, as the amount in controversy is satisfied and the Petition for Removal was timely,
 7 this Court has subject matter jurisdiction over this action.

8

9 Dated: March 25, 2015

10 SNELL & WILMER L.L.P.



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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT SUNTRUST MORTGAGE, INC.'S RESPONSE TO OSC RE REMOVAL** by the following method and addressed to the following:

X via CM/ECF electronic service

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DATED this 25 day of March, 2015.

An employee of Snell & Wilmer L.L.P.

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